

CWIS STAKEHOLDERS MEETING
DECEMBER 14, 2016
PHASE II RULE

Note: The information below includes clarified TCEQ responses to questions and comments raised by attendees at the December 14, 2016 CWIS stakeholders meeting. These responses are subject to change.

Topic 1: Points of Compliance (POC)

TCEQ: Summary and explanation of each drawing on the Points of Compliance handout.

SH [Stakeholder]: What is the TCEQ's perspective on what baseline flow would be considered "minimized" (referring to Ex.2.1)? It depends on the cooling water system itself, but in most cases if operation of the CWIS is determined to be commensurate with a cooling tower, the baseline flow would be considered minimized.

SH: Is this POC scenario #2 an either/or? Can you make a case for either the primary or makeup intake structure for Point of Compliance (POC)? Yes, TCEQ will rely on the applicant to justify why/how they chose the POC(s).

SH: Will *de minimis* be considered Best Technology Available (BTA) for impingement and entrainment? *De minimis* will be considered BTA for the pump structures, but we will look at the primary CWIS that feeds the heat exchanger for entrainment compliance.

SH: Entrainment is what passes into the system, is TCEQ suggesting that entrainment can occur at the pump structure where there is no screen? TCEQ is only concerned with entrainment at a POC where there is a heat element, as Entrainment Mortality becomes a concern. The TCEQ will not focus on entrainment at a POC without a heat element.

SH: How will the TCEQ determine whether *de minimis* is appropriate and what data will the TCEQ need to help with that determination? If the intake structure is withdrawing a relatively insignificant portion (5%) of the source water body flow at the location, the TCEQ can make a *de minimis* determination from that. If impingement is so low that it almost does not occur (there is a very low rate for impingement at the organism level), the TCEQ can make a *de minimis* determination from the low rates. (found on pg. 48, 309, federal register).

SH [Comment]: Rates are defined differently depending on location/ measurements/ species, therefore it is very hard to set one rate/ or setting a rate may not be possible.

SH [Comment]: POC scenario #3, if facilities are claiming CCRS, they must utilize cooling towers or demonstrate that intake flows are minimized in a manner commiserate to cooling towers

SH [Comment]: POC scenario #3, clarify that the POC can be directly on the river or pond/reservoir OR that the diagram is shown that way to demonstrate CCRS situations.

Topic 2: Application Requirements

TCEQ: Review of Worksheet 11.0

SH: Section b.v. will be very hard/costly for facilities to comply with, are engineering/design drawings required by rule?

- a. Design drawing will not be required from:
 - i. facilities with a closed-cycle recirculating systems (CCRS) designation
 - ii. facilities that receive cooling water from a Public Water System
 - iii. facilities that receive cooling water from an Independent Supplier (if the facility uses less than 25% of the independent supplier's actual intake flow for cooling purposes)
- b. Clarify TCEQ expectations for facilities required to submit design drawings for the CWS
 - i. A single page design drawing that indicates the position of the major components of the cooling water system. This information would include, but is not limited to:
 - a. Location of intakes and position within the water column;
 - b. Location of impoundments;
 - c. Location of any canals, pipes, or waterways conveying cooling water to, or within, the system; and,
 - d. Location of any CWIS(s) feeding the system or within the system.

SH: If a facility is designated a CCRS, why do you need any information on the cooling water intake structure? The ED still needs the information required under 40 CFR 125.98f (factors) to make a determination regarding BTA.

TCEQ: Review of Worksheet 11.1

SH: Do facilities need to complete Worksheet 11.1 for each CWIS or each POC? Facilities must complete Worksheet 11.1 for each CWIS that supplies surface water for cooling purposes to the facility so the TCEQ can verify applicability.

SH: Can managed fisheries apply for waivers for the r studies? Answer is discussed in worksheet 11.2

TCEQ: Review of Worksheet 11.2. Title should say "source water biological data"

SH: Referring to 1.c., does TPWD list threatened/ endangered species? No, it is saying that IF you have threatened or endangered species within the water body, information required for items a-g not included in the TPWD report, or equivalent, must be submitted.

SH: What will be considered a 'new' unit at an existing facility? (bottom of page 9 in the application) It would take significant modification to be considered "new" (i.e. a pump replacement would not qualify as new). Details to follow/ TCEQ to follow up.

TCEQ: Review of Worksheet 11.3. For any required studies that are listed in section 3 not completed, TCEQ will expect a detailed explanation why and proposed schedule for study completion.

SH: Section 1, if you are seeking a waiver, do you move to section 2 and find existing studies? If there is a similar facility/ manufacturer that has existing entrainment studies, you can submit those studies for your facility.

SH: What qualifies as a peer review/ the process of a peer review? (3.e.) It must be an external peer review, the TCEQ is still looking to provide clarification as to what this means by the next draft round.

Topic 3: Application Requirement Submittal Schedules

TCEQ: To receive an alternate submittal schedule, a facility **MUST** submit an application for a minor amendment in time to issue **BEFORE 7/14/2018**. If your permit is renewing before 7/14/18 anyway, the TCEQ can add an alternate submittal schedule to the permit. The facility must justify to the TCEQ that the alternate schedule is necessary. All proposed alternate schedules require TCEQ/ EPA review and approval.

SH: Has USFWS provided guidance or comments? No additional direction has been received from USFWS. The SPIF form will be submitted to USFWS, as done currently, and USFWS can request additional information as needed.

SH: Will the TCEQ or the EPA distribute the SPIF? TCEQ will send it directly to EPA, but that process may change.

Topic 4: Litigation Update (Michael Parr)

TCEQ: Procedural Schedule for ongoing litigation:

10/12/16 EPA/industry/petitioners briefs were due (can be found in Westlaw)
11/14/16 Amicus briefs on behalf of the petitioners were due
12/19/16 industry reply briefs are due
1/23/17 Appendix for all exhibits is due
2/6/17 Final briefs due

Q & A

SH: Is the information on Worksheet 11.1 intended to capture the f factor information?
Yes, we are trying to capture f-factors in Worksheets 11.0-11.1.

SH: Most CCRS's have no entrainment data, will there be an entrainment data collection phase? The TCEQ needs clarification from the EPA on this requirement. The TCEQ does not think that the information will be required for initial permits, but there will be requirements within the permit to establish a time frame for facilities to complete the studies. The pre-ambule suggests that the TCEQ is allowed to include interim milestones in the permit (pg 48,327).

SH: On worksheet 11.0, do table 19 and 20 ask for the same information? Are both necessary? No, the tables do not request the same information. Table 19 asks for information on the cooling water system as a whole, table 20 asks for information for the cooling water intake structures themselves. Both tables are required and are intended to satisfy r(3) and r(5) application requirements.

SH: Can the questions on 11.0 be streamlined? The TCEQ still needs the information on the intake structures to determine BTA. For anything that is unavailable, facilities can give a justification as to why they don't have it/ why it may not be interested. Some information requested in Worksheet 11.0 may be teased out and included in Technical Report 1.0.

SH: Do facilities need design drawings for the Intake structure or the whole system? The rule may require both, but the TCEQ will review further

SH: If Phase I allows for CCRS to be considered BTA, why should facilities be required to study entrainment/ impingement when the BTA is already determined? What level of studies will the TCEQ accept? Phase I requires routine monitoring. Phase II does not require routine monitoring after the initial study and BTA is issued, therefore the initial study needs to be more rigorous. If the facility is CCRS and seeking a waiver because it is stocked and managed, then the TCEQ will be looking previous studies of impingement/ entrainment to determine if more data collection by the facility is necessary.

SH: Ichthyoplankton data may not be available for a water body, so what other data is sufficient? If the facility is a CCRS, why should they be assessed for this problem when they do not have it? The TCEQ is required to review any existing entrainment performance studies, which includes previously conducted studies or studies obtained from other facilities (including manufacturers) addressing the technology efficacy. The TCEQ is aware of facilities that have collected or are collecting entrainment performance data. It will be up to each facility to perform due diligence in obtaining this information. If a facility utilizes studies obtained from other facilities, the facility will be required to justify how it is representative of their facility. If a facility is unable to located data for submission, they must providing an explanation of why the data is unavailable and efforts made to obtain the data.

SH: Clarify the timing to submit entrainment studies/ peer review, etc? The TCEQ can establish a timeline, within an issued permits. For facilities that are below 125 MGD, then we still need whatever existing data that facilities locate to make a BTA determination. The pre-amble suggests that the TCEQ is allowed to include interim milestones in the permit (pg 48,327).

SH: Do facilities need to apply for a minor amendment to incorporate an alternate schedule? Yes, a minor amendment will be required to incorporate an ASSAR into a permit by 7/14/18. Items r(2)- r(8) must be in the application if you apply after 7/14/18, unless you have previously amended the permit to receive an alternate schedule. If a facility does not have items r(9)-r(13), ready then you can make a case for why it is delayed in the application (do not need by exactly 7/14/18).

TCEQ [Final Comments]

- Draft application worksheets and webpage literature available online.
- Comment deadline on draft worksheets and webpage literature: 2/13/17 (60 days).